Filed 6/9/15 In re N.P. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re N.P., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. C.R., Defendant and Appellant.	E061489 (Super.Ct.No. SWJ1300221) OPINION

APPEAL from the Superior Court of Riverside County. John M. Monterosso, Judge. Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, and Anna M. Marchand, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant C.R. (Mother) appeals from the juvenile court's order terminating her reunification services as to her two-year-old son N.P. On appeal, Mother argues that there was insufficient evidence to support the juvenile court's finding that there was no substantial probability the child could safely be returned to Mother's care if given additional services and that the juvenile court abused its discretion by terminating Mother's services while continuing them for Father. We reject these contentions and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the Florida Department of Children and Families (Florida DCF) in October 2010 when it was reported that Mother had physically abused her then two-year-old daughter.[1] It was also reported that Mother had used methadone. The physical abuse report was not substantiated; however, Mother and L.P. (Father)[2] both tested positive for methadone and cocaine.

On October 18, 2010, Florida DCF filed a petition on behalf of the two-year-old child based on the parents' drug use. On November 9, 2010, the Florida juvenile court declared the child a dependent of the court and placed her in the custody of Mother. However, on February 22, 2011, the child was removed from parental custody after Mother tested positive for cocaine, methadone, marijuana, and oxycodone, and the

[1] Mother's daughter is not a party to this appeal.

[2] Father is not a party to this appeal.

parents had engaged in domestic violence. Father had refused to drug test but admitted to using the same drugs as Mother. The parents were provided with reunification services but failed to reunify with their daughter. A hearing to free the child for adoption was set for June 6, 2013.[3]

On February 24, 2013, Mother tested positive for methamphetamine and amphetamines while she was pregnant with her then unborn son, N.P. On March 1, 2013, the Florida juvenile court ordered Mother to enter into an inpatient substance abuse treatment program to protect her unborn child. Instead of entering an inpatient drug treatment program, Mother and Father left Florida and moved to California where they resided with the maternal grandmother.

On March 22, 2013, the Riverside County Department of Public Social Services (DPSS) received a referral alleging Mother was nine months pregnant, did not have prenatal care, and had tested positive for methamphetamine throughout her pregnancy. It was also reported that Mother had an open dependency case in Florida in regard to her daughter and that Mother had left Florida to prevent removal of her unborn child.

On March 27, 2013, after the child was born, DPSS received an immediate response referral alleging that the parents had an open dependency case in Florida with their parental rights due to be terminated, that Mother had used methadone and methamphetamine throughout her pregnancy, that Mother had admitted to using drugs on

[3] Parental rights as to their daughter were eventually terminated by the Florida juvenile court.

February 22, 2013, and that Mother had tested positive for methamphetamine on February 24, 2013. Mother had tested negative at the hospital for illegal substances and had denied using illegal drugs after she discovered she was pregnant. However, Mother had admitted to having a lengthy history of abusing drugs and having previously completed two drug rehabilitation programs. She had admitted to first using marijuana when she was 11 years old; cocaine when she was 15 years old; crack cocaine and pills when she was 18 years old; and methamphetamine when she was 24 years old. Mother stated that she did not want to go into the inpatient drug treatment program because she did not believe she had a drug problem. She also asserted that she believed that she was being forced into something that she did not want to do.

On March 28, 2013, due to the risk of the parents fleeing the jurisdiction, testing positive for methamphetamine, and being non-compliant with their open case plan in Florida, the child was taken into protective custody and placed in a foster home upon his discharge from the hospital.

On April 2, 2013, DPSS filed a petition on behalf of the child pursuant to Welfare and Institutions Code[4] section 300, subdivision (b) (failure to protect), based on the parents' extensive history of abusing controlled substances and their failure to benefit from services received in their open dependency case in Florida. The child was formally

[4] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

detained on April 3, 2013, and the parents were offered supervised visitation two times per week.

In the May 2013 jurisdiction/disposition report and the June 2013 addendum report, DPSS recommended that the allegations in the petition be found true and that the parents be denied reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(13). Despite the recommendation, the parents were participating in visitations, services, and testing negative for controlled substances.

On June 4, 2013, the parents waived their rights to a trial and the juvenile court sustained the allegations in the petition. The child was declared a dependent of the court and the parents were provided with reunification services. The parents' case plan required them to participate in general counseling, a parenting education program, a substance abuse treatment program, and randomly drug test. Father's case plan also required him to participate in an anger management program.

By the six-month review hearing in December 2013, both parents were compliant with their case plan. They were still residing with the maternal grandmother and the social worker recommended that the parents secure their own housing as the maternal grandmother had a prior history with child protective services and was currently attending a methadone clinic. The parents had completed a 16-week outpatient drug treatment program and had provided negative drug tests. Mother's discharge summary noted that she had completed the outpatient treatment program " 'with success.' " The parents had also completed a parenting program and were participating in counseling

services. Father had also completed seven anger management sessions out of 16. Mother had shown "adequate parenting skills during her visits, however, it [was] noted that both parents could maybe use some extra parenting skills as they have never really had a chance to be parents to an infant while sober." "The SafeCare program was presented to [Mother] and she seemed very excited to participate in it." Mother's therapist reported that Mother was doing well, meeting her treatment goals, and that she was in the " 'action stage of change.' "

The parents had also regularly visited the child. "During the visits, the parents appear to be attentive and loving and [the child] appears to be bonding appropriately with them and be comfortable in their presence." However, DPSS had expressed concerns about the parents' hygiene and about the fact that the parents were not "fully conscientious about [the child's] safety." DPSS also had concerns about a risk of relapse since both parents had been heavy drug users, had only completed a program with minimum requirements, and had yet to engage in any aftercare services. As such, DPSS recommended the parents be offered additional services.

On December 5, 2013, the juvenile court continued both parents' services for an additional six months. The court recognized that Mother had done a "fantastic job" in her case plan, but found Mother's progress incomplete.

By the 12-month review hearing in June 2014, the parents were residing in an older, small trailer on a gated, secluded property that also included the maternal grandmother's home. An evaluation of the home showed that the home met minimal

standards and there were a few safety hazards that required correction. Neither parent had a valid driver's license and had used the maternal grandmother's boyfriend's car to get to town. The parents had participated in an aftercare parenting program and were attending 12-step meetings. Father had completed his anger management program and continued to demonstrate sobriety by negative drug test results. Mother, however, had tested positive for methadone on March 21, 2014. When confronted by DPSS about her positive test, Mother adamantly denied she had used any drugs. In addition, Mother submitted three diluted drug tests. In May 2014, DPSS referred Mother to a formal aftercare substance abuse treatment program; however, Mother was not admitted into the program because she did not satisfy necessary criteria showing she had abused, or was dependent on, drugs. Mother submitted 14 negative drug tests between December 10, 2013 and June 16, 2014. Mother completed her counseling on December 18, 2013, and her discharge letter noted that Mother had a " 'willingness to understand the goals of therapy,' " had a " 'sincere desire to become a healthier and stronger individual,' " and was " 'in the action stage of change.' "

The parents continued to visit regularly with the child and had begun unsupervised visits on February 18, 2014. However, once Mother tested positive for drug use, the visits had reverted back to supervised in the DPSS office. During the supervised visits, several concerns regarding the parents' parenting skills, poor judgment, and whether they had the ability to keep the child safe were noted. Once Mother submitted a negative hair follicle test and two additional negative random drug tests, DPSS had authorized

unsupervised visits again. However, following an objection by the child's counsel, DPSS limited the parents to supervised visits. The parents' visits with the child after June 5, 2014 had appeared to be appropriate with the parents being loving and nurturing toward the child.

DPSS recommended terminating the parents' services and setting a section 366.26 hearing. DPSS explained that even though the parents had participated in their case plan, they did not appear to have benefitted from services. DPSS noted concerns about the parents' stability based upon Mother's Facebook postings that her relationship felt " 'like hell,' " and Mother's posting pictures of marijuana on her Facebook. DPSS also noted Mother's unresolved mental health issues pointing to Mother's postings that she did not want to live anymore. DPSS further noted that the parents had shown irresponsible behaviors such as driving without a license and Mother's failure to address an active warrant in Florida.

The contested 12-month review hearing was held on July 7, 2014. At that time, the juvenile court continued reunification services for Father and authorized Father to have unsupervised day visits. However, the court terminated Mother's reunification services, finding Mother had failed to make substantial progress in her case plan as evidenced by the diluted and positive drug tests. The court also found that while Mother had shown some negative drug tests in recent months, Mother had not benefitted from her reunification services and that there was no substantial probability Mother would resolve

her chronic drug history or that the child would be returned to her care if given additional services. Mother was authorized visitation one time per month. This appeal followed.

II

DISCUSSION

A. *Substantial Probability of Return to Mother*

Mother argues that the juvenile court erred in terminating her services at the 12-month review hearing. Specifically, she asserts there was insufficient evidence to support the court's finding that there was no substantial probability the child could safely be returned to Mother's care within the statutory time frame if given additional services.

"[F]amily preservation is the first priority when dependency proceedings are commenced. [Citation.]" (*In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1112.) For that reason, the juvenile court is generally required to provide family reunification services when it removes a child from parental custody. (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 876 (*Katelynn Y.*); § 361.5, subd. (a).) However, the duration of family reunification services is not limitless. Further, expeditious resolution of the dependent child's status is also a priority, especially where infants and toddlers are involved. (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 175 (*M.V.*).) Where, as here, the child was under the age of three years when removed from parental custody, reunification services are presumptively limited to six months. (§ 361.5, subd. (a)(1)(B); *Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 611-612 (*Daria D.*).)

"[U]nder section 361.5, subdivision (a)(2), . . . services shall not exceed six months if the child is under three years of age on the initial removal date, unless the court finds there is a substantial probability the child can be returned to the parents' custody within an extended twelve- or eighteen-month period." (*Daria D.*, *supra*, 61 Cal.App.4th at p. 610.) If reasonable reunification services have been provided, the juvenile court can continue services past the 12-month review hearing only if it finds "that there is a substantial probability that the child will be returned to the physical custody of his or her parent . . . and safely maintained in the home" before the expiration of 18 months from the date of detention. (§ 366.21, subd. (g)(1); *In re K.L.* (2012) 210 Cal.App.4th 632, 641.) Under section 366.21, to find a substantial probability of return, the juvenile court must find the parent regularly visited the child; the parent made significant progress in resolving the problem prompting removal of the child; the parent has demonstrated the capacity and ability to complete the objectives of the case plan; and the parent can provide for the child's safety, protection and well-being. (§ 366.21, subd. (g)(1)(A)-(C).) "[M]oreover, the court must find all three of the listed factors to justify a finding of a substantial probability the child will be returned to his or her parent. (§ 366.21, subd. (g)(1).)" (*M.V.*, *supra*, 167 Cal.App.4th at p. 178.)

"The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of a child's circumstances when making decisions regarding the child." (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) Further, the juvenile court may consider all relevant evidence in making its findings. (*M.V.*, *supra*, 167 Cal.App.4th at

p. 181.) It alone determines where the weight of the evidence lies. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

We review the juvenile court's order terminating reunification services to determine if it is supported by substantial evidence. (*In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.) "The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence." (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250-251; see *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689.) Substantial evidence is "reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged . . . ." (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.)

Substantial evidence supports the juvenile court's finding that the child was unlikely to be returned to Mother within the two months remaining between the date of the 12-month hearing and the expiration of the 18-month period since his detention. There is no dispute she maintained consistent and regular contact with the child, but she

had failed to demonstrate significant progress toward "resolving [the] problems that led to the child's removal from the home" by the time of the 12-month review hearing. (§ 366.21, subd. (g)(1)(B).) Mother appeared to be drug-free at the time of the hearing, but it was difficult to determine for how long. Mother had used drugs since she was 11 years old. She had continued to abuse drugs while pregnant with the child, despite having completed two drug treatment programs. She had lost custody of her daughter because of drug use, was under court supervision when she used drugs in 2013, and failed to reunify with her daughter as a result of her drug use. And, after her third drug treatment program, Mother had relapsed. She had tested positive for methadone in March 2014 and had three diluted drug tests between December 2013 and May 2014. At best, Mother stopped her substance abuse for about one year. Although Mother is to be commended for her progress in combating her long-standing history of abusing a variety of drugs, substantial evidence shows that Mother had not benefitted from her services and had continued to display poor judgment.

Whereas DPSS acknowledged Mother had engaged in her case plan and completed programs, Mother did not make definitive or significant progress in resolving problems that led to the child's removal from the home, nor did she demonstrate the capacity and ability both to complete the objectives of her treatment plan and to provide for the child's safety, protection, and physical and emotional well-being, as required by section 366.21, subdivision (g)(1), to continue services to the 18-month hearing. (*M.V.*, *supra*, 167 Cal.App.4th at pp. 177-178.) Given Mother's long-standing history of drug

use, the uncertainty surrounding Mother's sobriety, and her failure to benefit from services, there was no substantial probability the child would have been returned to Mother in a period of two months.

In essence Mother asks this court to re-weigh her accomplishments and failures in the course of the services she received. However, our task in resolving Mother's contention is guided by well-settled law. Our inquiry here is limited to a determination as to whether substantial evidence supports the lower court's findings; we do not weigh evidence, consider the credibility of witnesses or resolve conflicts in the evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021.) Thus, we are not at liberty to weigh, as Mother suggests, factors such as Mother's visitation with her child, her progress in her case plan, her completion of services against other factors such as her positive and diluted drug tests, her failure to benefit, and her lack of judgment. The juvenile court has weighed the relevant factors; and we are satisfied that there is substantial evidence to support its decision.

B. *Terminating Services for Mother While Continuing Services for Father*

Mother also argues that the juvenile court abused its discretion by terminating Mother's services while continuing them for Father. She acknowledges that all the Courts of Appeal in considering this issue have concluded that a court may treat one parent differently than the other in deciding whether to extend or terminate reunification services. (See, e.g., *Katelynn Y., supra,* 209 Cal.App.4th at p. 881; *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651; *In re Jesse W.* (2007) 157 Cal.App.4th 49, 55-56

(*Jesse W.*); *In re Alanna A.* (2005) 135 Cal.App.4th 555, 565-566 (*Alanna A.*).) She, however, asserts that extending Mother's services would promote the child's best interests and would neither be " 'fruitless' " nor an " 'unwise use of governmental resources.' "

Where, as here, the juvenile court continues reunification services for one parent and does not set a section 366.26 hearing, the court retains discretion to terminate the nonreunifying parent's services. (*Katelynn Y.*, *supra*, 209 Cal.App.4th at p. 881; *Jesse W.*, *supra*, 157 Cal.App.4th at pp. 55-56; *Alanna A.*, *supra*, 135 Cal.App.4th at pp. 565-566.) The court may, but need not, offer reunification services to the other parent. (*Ibid*.) The court may consider whether it would be fruitless to provide reunification services to the nonreunifying parent; if so, "the general rule favoring reunification services is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citations.]" (*Id.* at p. 566.) "The parent seeking additional services has the burden of showing such an order would serve the child's best interests." (*Katelynn Y.*, at p. 881.) In exercising its discretion, the court evaluates whether the parent will utilize additional services and whether services "would ultimately inure to the benefit of the minor." (*Jesse W.*, at p. 66.) We review that decision for abuse of discretion. (*Katelynn Y.*, at p. 881.) "We will not disturb the court's determination unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment

for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)" (*Katelynn Y.*, at p. 881.)

Mother failed to meet her burden of proving it was in the child's best interests to continue her services. In the juvenile court, her counsel presented no evidence on that issue. Rather, counsel argued in regards to Mother's progress in her services and how she had benefitted from those services.

Citing *Alanna A.*, *supra*, 135 Cal.App.4th 555, Mother argues that where the nonreunifying parent is likely to have continued contact with the child, continued services will usually be in the child's best interests. In that case, our colleagues from Division One of this court concluded that there was no abuse of discretion in terminating the father's services while continuing the mother's services. (*Id*. at pp. 558-559, 565-566.) In the instant case, despite being offered numerous substance abuse treatment programs and services to combat her long-standing history of abusing a variety of drugs, Mother had failed to maintain her sobriety, had relapsed within less than one year of starting her services in this case, and had failed to benefit from her services. "In deciding whether to terminate the services of one parent who has failed to participate or make progress toward reunification, the court is not constrained by a consideration of the other parent's participation in services." (*Jesse W.*, *supra*, 157 Cal.App.4th at p. 60.) The juvenile court did not abuse its discretion by terminating Mother's services.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.